



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

In re:) IN CHAPTER 7 PROCEEDINGS
CHEMETCO INC.,)
Debtor.) Case No. 01-34066

ORDER

The above captioned matter comes before the Court on the motion of Donald M. Samson, trustee, to pay secured creditors and allocate funds (the "Motion to Pay"), the objection filed by the Illinois EPA and the responses filed by Paradigm Minerals and Environmental Inc. ("Buyer") and Commerce Bank. William Niehoff and Donald M. Samson, appearing for the trustee, Daniel Nester and Steven Poplawski appearing for Paradigm, David Unseth and Daniel Nester appearing for Commerce Bank and James Morgan appearing for the Illinois EPA, and the Court having heard argument of counsel, having considered the pleadings, responses, memoranda, exhibits submitted by the parties and the record in the case, and being advised in the premises finds as follows:

- 1) Donald M. Samson, trustee, had given notices of intent to sell the following property of the estate (collectively, the "Sold Materials"):
 - a. Approximately 3,500 metric tons of mixed fines
 - b. Approximately 4,000 metric tons of scrubber sludge
 - c. Approximately 120 tons of furnace cleanup

There were no objections to the notices filed within the time set forth in the notices, authorizing the trustee to sell the Sold Materials.

- 2) Laura K. Grandy, the prior trustee, entered into an Asset Purchase and Processing Agreement with Industrial Asset Disposition LLC dated July 29, 2009, as approved and clarified by order entered September 21, 2009 (the "Approval Order"), and as further clarified by the order granting the trustee's Motion to Clarify the Asset Purchase and Processing Agreement (the "Motion to Clarify") entered May 4, 2010 (as approved and clarified, the "Purchase Agreement").¹

¹ Capitalized terms not otherwise defined in this Order shall have their meanings set forth in the Purchase Agreement.

- 3) That pursuant to order of this Court entered December 19, 2002, in adversary proceeding number 02-3103, this Court ordered that Commerce Bank had a valid lien against Chemetco's inventory.
- 4) That the Sold Materials constitute Chemetco's inventory.
- 5) That the Purchase Agreement gives Buyer the right to sell or process Scrubber Sludge, Recovered Materials and Slag.
- 6) That Schedule 1.2 of the Purchase Agreement identifies Scrubber Sludge and Slag as "consisting of approximately thirty thousand (30,000) to fifty thousand (50,000) tons of Scrubber Sludge and approximately nine hundred thousand (900,000) tons of Slag, various and sundry feed stocks, 'in-process' materials (i.e. materials contained within or around the existing proceeding equipment) and sediments and dusts associated with environmental clean-ups ..."
- 7) That Section 4.2 of the Purchase Agreement defines Recovered Materials as "copper, zinc, lead, tin, nickel and other materials ..."
- 8) That all of the Sold Materials constitute Scrubber Sludge, Slag and/or Recovered Materials.
- 9) That none of the Sold Materials constitute Scrap Assets as defined in 1.1(a) of the Purchase Agreement.
- 10) That Processing Revenue is defined in the Purchase Agreement as "the gross revenue from the sale of Scrubber Sludge, Recovered Materials and Slag net of Operating Expenses."
- 11) That "Operating Expenses" was clarified by the Motion to Clarify to include a flat fee of 30% of the gross revenue from the sale of Recovered Materials to be paid to Buyer.
- 12) That, pursuant to the Purchase Agreement (as clarified), the Processing Revenue for the Sold Materials is calculated as the gross revenue from the sale of the Sold Materials net of the following:
 - a. Operating Expenses payable to Buyer (i.e., 30% flat fee); and
 - b. Operating Expenses incurred by Seller that relate to, among other things, (a) personnel and administration costs, including trustee's fees and any applicable tax excluding income tax, (b) environmental compliance costs, (c) health and

safety costs, and (d) mutually agreed upon charges by the parties from time to time.

The resulting Processing Revenue for the Sold Materials is then allocated as follows:

- a. Escrowed Funds for future environmental cleanup-5%
 - b. Payment to Buyer-25%
 - c. Payment to the Seller-35%
 - d. Payment to Commerce Bank-35%
- 13) That the formula for calculating and allocating the Processing Revenue approved herein provides a fair and administratively efficient procedure for distributing revenue for what will be an on-going process. Among other things, based upon the estimated gross revenue set forth in the Motion to Pay, the formula will allocate approximately \$83,329.10 to the Escrowed Funds, which funds will be available after termination of the Purchase Agreement “to remediate any environmental problem or condition existing on the site prior to the filing of this bankruptcy” (Approval Order, ¶ 3.d).
- 14) The formula for calculating and allocating the Processing Revenue approved herein has previously been approved by the parties in interest and this Court and the application of this formula to the sales of the Sold Materials is proper and in the best interest of the estate, creditors and parties in interest.
- 15) The Court incorporates by reference as if fully set forth herein all findings of fact and conclusions of law set forth on the record of the July 27, 2011 hearing on the Motion to Pay.

WHEREFORE IT IS ORDERED that the relief requested in the Motion to Pay is granted in all respects and the Illinois EPA’s objection to the Motion to Pay is overruled.

IT IS FURTHER ORDERED that the trustee is authorized to distribute funds from the sale of the Sold Material, consisting of:

- a. Approximately 3,500 metric tons of mixed fines
- b. Approximately 4,000 metric tons of scrubber sludge
- c. Approximately 120 tons of furnace cleanup

in accordance with the allocations set forth in the Motion to Pay. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry.

Counsel for the moving party shall serve a copy of this Order by mail to all interested parties who were not served electronically.

ENTERED: August 8, 2011

/s/ Kenneth J. Meyers

UNITED STATES BANKRUPTCY JUDGE